RECENT CASES.

ADMIRALTY — PRACTICE — APPEARANCE OF OWNER AFTER LIBEL IN REM; JUDGMENT IN PERSONAM. — The defendants' vessel was arrested, in a suit *in rem*, for damages caused by a collision. The defendants, who were foreigners, though not served, entered an appearance, bonded the vessel, defended the suit, and put in a counterclaim. *Held*, that personal judgment may be given against the defendants and their bail for the whole damage, though it exceeds the value of the vessel arrested. *The Dupleix*, 27 T. L. R. 577 (P. D.).

This case, following two cases on substantially the same question, may be taken to settle the law in England to the effect that, if the defendant enters an appearance in an action *in rem*, a personal judgment may be given against him. *The Dictator*, [1892] P. 304; *The Gemma*, [1899] P. 285. The arrest of a vessel on a libel *in rem* is thus given the same effect as a foreign attachment, which results in a personal action. *Atkins* v. *The Disintegrating Co.*, 18 Wall. (U. S.) 272. Such an attachment is the nearest approach to an action *in rem* found in the practice of the ancient admiralty court of England. See CLERKE, PRAXIS CURIAE ADMIRALITATIS ANGLIAE, 3 ed. (1722), 38. It seems curious that the later English cases should follow this practice in a suit professedly *in rem*, inasmuch as the conception of an action purely against the thing itself, based on a maritime lien, and quite distinct from a suit against the owner, was recognized by the Privy Council in 1850. *The Bold Buccleugh*, 7 Moore P. C. 267. Dr. Lushington, in 1842, expressed the opinion that no judgment *in personam* could be given in a suit *in rem*. See *The Volant*, 1 W. Rob. 383, 389. His view is followed in the United States. *The Monte A.*, 12 Fed. 331; *The Nora*, 181 Fed. 845.

BANKRUPTCY — DISCHARGE — EFFECT ON SURETY ON ATTACHMENT BOND. — Property of the defendant was attached more than four months prior to the filing of his petition in bankruptcy, and released on a surety bond. The defendant pleaded his discharge in bankruptcy. *Held*, that a special judgment with stay of execution may be rendered to hold the surety. *Butterick Pub. Co.* v. *Bowen Co.*, 80 Atl. 277 (R. I.).

Property of an insolvent defendant was attached within four months prior to his bankruptcy, and released on a surety bond. The plaintiff recovered judgment. The court granted an order upon the defendant and its surety for the production of the property attached, to enable the plaintiff to sue on the bond. *Held*, that the order should be annulled. *Wise Coal Co.* v. *Columbia Zinc & Lead Co.*, 138 S. W. 67 (Mo., St. Louis Ct. App.).

These cases represent the weight of authority. *U. S. Wind Engine & Pump Co.* v. *North Penn Iron Co.*, 227 Pa. St. 262; *Windisch-Muhlhauser Brewing Co.* v. *Simms*, 55 So. 739 (La.). The first rests upon the fiction that the bond is given for the lien. This is hard to sustain on principle, because the bond does not become a debt until judgment is unsatisfied. *Carpenter* v. *Turrell*, 100 Mass. 450. The discharge being a bar to the action, the contingency on which the surety's liability depends can never happen. See *Wolf* v. *Stix*, 99 U. S. 1, 9. But except for the bond, the plaintiff could enforce his lien. *Bassett* v. *Thackara*, 72 N. J. L. 81. A contrary decision in the principal case would mean that the plaintiff's advantage is lost if the defendant can, and retained if he cannot, obtain a surety. See *In re Albrecht*, 17 N. B. R. 287, 292. The decision accords with the spirit of § 16 of the Act of 1898, and does substantial justice. See *Hill* v. *Harding*, 130 U. S. 699, 703.

BANKRUPTCY — PARTNERSHIP AND INDIVIDUAL CLAIMS AND ASSETS — EFFECT OF ACT OF BANKRUPTCY ON NON-ASSENTING PARTNER. — One of

two partners executed a general assignment of firm property. In bankruptcy proceedings against the partnership and the individual partners, the partner not assenting to the assignment set up that his individual assets exceeded his individual debts. The property of the firm together with that of both partners was not sufficient to pay the firm debts. *Held*, that the non-assenting partner may be adjudged a bankrupt. *Yungbluth* v. *Slipper*, 185 Fed. 773 (C. C. A., Ninth Circ.).

This case is opposed to the generally approved rule that partners in a bankrupt firm cannot be adjudicated bankrupts if they have not committed or been participants in committing an act of bankruptcy. See *In re Meyer*, 98 Fed. 976, 980. This rule is a logical result of the entity theory of partnership in bankruptcy. *In re Hale*, 107 Fed. 432. But the courts fail to apply the entity theory consistently, holding that upon adjudging a firm bankrupt, the court may draw to the administration the individual estates of the partners. *Dickas* v. *Barnes*, 140 Fed. 849; *Francis* v. *McNeal*, 186 Fed. 481. Although illogical, the principal case accomplishes this result in a practical way and simultaneously provides for the partner's discharge.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — DATE TO WHICH TRUSTEE'S TITLE RELATES BACK. — A bank, having on deposit moneys belonging to one against whom a petition in bankruptcy had been filed and having no actual notice of the filing, paid out money on checks delivered by the depositor to the payee previous to the filing of the petition. *Held*, that the bank may not be required, on summary order, to turn over to the trustee in bankruptcy the amount so paid out. *Matter of Zotti*, 26 Am. B. R. 234 (C. C. A., Second Circ.). See NOTES, p. 79.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — LIENS WHICH ARE VOID AS TO CREDITORS. — A bankrupt gave a chattel mortgage which by the state (Ohio) law was void as to judgment creditors of the mortgagor, though good *inter partes*. The mortgagee claims his lien on the mortgaged property, now in the trustee's hands. *Held*, that the trustee takes the property free from the mortgage lien, having the right of a judgment creditor under § 47 *a* of the Bankruptcy Act as amended by the Act of June 25, 1910. *In re Hammond*, 26 Am. B. Rep. 336 (Dist. Ct. N. D. Ohio).

This construction of the amendment to § 47 *a* does away with the unfortunate rule of *York Mfg. Co.* v. *Cassell*, 201 U. S. 344. See 24 HARV. L. REV. 620. *Cf. In re Franklin Lumber Co.*, 26 Am. B. R. 37.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — RIGHT OF ACTION FOR LIBEL. — The plaintiff, in an action for a libel concerning his credit, which caused him pecuniary damage, became bankrupt. *Held*, that the right of action did not pass to the trustee in bankruptcy. *Epstein* v. *Handverker*, 116 Pac. 789 (Okl.).

For a discussion as to what rights of action in tort should pass to the trustee in bankruptcy, see 24 HARV. L. REV. 396. The principal case seems correct, as the right of action in it arises not from injury to property, but from injury to reputation; and it is only an indirect effect of the tortious act to diminish the bankrupt's estate.

BILLS AND NOTES — PURCHASERS FOR VALUE WITHOUT NOTICE — RIGHT OF MAKER TO FUNDS OF WRONGDOER HELD BY PLAINTIFF. — The plaintiff, a holder in due course of a check wrongfully indorsed to him, had, at the time of bringing suit against the maker of the check, funds of the wrongdoer in its hands. *Held*, that the defendant cannot avail itself of these funds as a set-off. *Amalgamated Sugar Co.* v. *United States National Bank of Portland*, 187 Fed. 746 (C. C. A., Ninth Circ.).

For a discussion of the principles involved, see 24 HARV. L. REV. 665.